

IN THE UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

ANDREW WOLTERS,

Petitioner

v.

CHARLES SAMUELS, JR.,

Respondent

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CIVIL NO. 3:CV-13-1217

(Judge Conaboy)

FILED
SCRANTON

MAY 22 2013

MEMORANDUM
Background

PER
DEPUTY CLERK

This pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 was initiated by Andrew Wolters, an inmate presently confined at the United States Penitentiary, Lewisburg, Pennsylvania (USP-Lewisburg). Petitioner has also filed a request for leave to proceed in forma pauperis. See Doc. 2.

Named as Respondent is Director Charles Samuels, Jr. of the Federal Bureau of Prisons (BOP).¹ For the reasons outlined below, Petitioner will be granted leave to proceed in forma pauperis for the sole purpose of the filing of this matter, however, his petition will be denied without prejudice to any right Wolters may

¹ The only properly named respondent in a federal habeas corpus action is the applicant's custodial official. See 28 U.S.C. § 2242. The USP-Lewisburg Warden is presently Wolters' custodial official

have to reassert his present claims in a properly filed civil complaint.

Petitioner does not challenge the legality of his criminal conviction, the resulting sentence, or the execution of his sentence.² Rather, Hill states that he submitted three (3) requests under the Freedom of Information Act (FOIA) to the BOP on March 4, 2013.³ See Doc. 1, p. 7. His requests sought a copy of an internal investigative report pertaining to his alleged rape by prison employees on September 27, 2011; copies of grievances filed against former USP-Lewisburg Correctional Officer Eric Williams; and a copy of a September, 2012 team review report regarding Petitioner's confinement status. See id. The Petition claims entitlement to federal habeas corpus relief on the basis that the BOP has failed to timely respond to his FOIA requests.

Wolters seeks injunctive relief, specifically, that the BOP be directed to turn over the documents sought in his FOIA requests or in the alternative provide Petitioner with an explanation for their refusal to comply with his requests.

Discussion

Habeas corpus petitions are subject to summary dismissal pursuant to Rule 4 ("Preliminary Consideration by the Judge") of

² Wolters states that he is presently serving a 1999 sentence imposed by the United States District Court for the Central District of California.

³ The FOIA requires that federal government information including agency records, with certain exceptions, be made available to the public. See 5 U.S.C. § 552.

the Rules Governing Section 2254 Cases in the United States District Courts, 28 U.S.C. foll. § 2254 (1977). See Patton v. Fenton, 491 F. Supp. 156, 158-159 (M.D. Pa. 1979). The Rules Governing Section 2254 Cases in the United States District Courts are applicable to § 2241 petitions under Rule 1(b) of the Section 2254 Rules.); Mutope v. Pennsylvania Board of Probation and Parole, Civil No. 3:CV-07-472, 2007 WL 846559, at *2 (M.D. Pa. Mar. 19, 2007) (Kosik, J.).

Rule 4 states in relevant part that "[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner." A petition may be dismissed without review of an answer "when the petition is frivolous, or obviously lacking in merit, or where. . . the necessary facts can be determined from the petition itself. . . ." Gorko v. Holt, 2005 WL 1138479 *1 (M.D. Pa. May 13, 2005) (McClure, J.) (quoting Allen v. Perini, 424 F.2d 134, 141 (6th Cir. 1970)).

Habeas corpus review under § 2241 "allows a federal prisoner to challenge the 'execution' of his sentence." Woodall v. Federal Bureau of Prisons, 432 F.3d 235, 241 (3d Cir. 2005). Review is available "where the deprivation of rights is such that it necessarily impacts the fact or length of detention." Leamer v. Fauver, 288 F.3d 532, 540 (3d Cir. 2002). In Suggs v. Bureau of Prisons, 2008 WL 2966740 *4 (D. N.J. July 31, 2008), it was

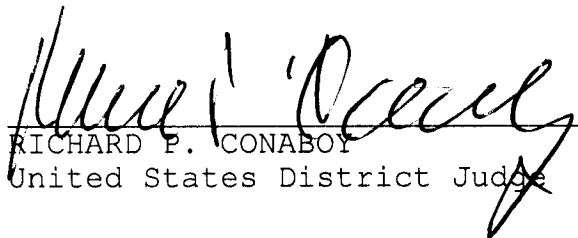
reiterated that in cases where "a judgment in Petitioner's favor would not affect the fact or duration of Petitioner's incarceration, habeas relief is unavailable." Recognizing the observation in Woodall that the precise meaning of execution of sentence is hazy, it has been similarly held that to "the extent that a prisoner challenges his conditions of confinement, such claims must be raised by way of a civil rights action." Hairston v. Grondolsky, 2008 WL 618805, *2 (D.N.J. March 3, 2008).

From a careful review of the petition, it is clear that Wolters does not claim entitlement to speedier or immediate release from custody nor does he challenge the legality of his present incarceration. He is simply not raising a claim related to the execution of his sentence as contemplated in Woodall. Rather, based on the grounds asserted in his petition, Petitioner seeks relief solely on the alleged refusal of the BOP to respond to his above described FOIA requests.

The Petition does not allege that the purportedly improper actions taken by BOP officials included a loss of good time credits or otherwise extended the length of Wolters' confinement. Thus, the purported failure to respond did not adversely affect the fact or duration of Petitioner's incarceration. Accordingly, "habeas corpus is not an appropriate or available federal remedy." See Linnen v. Armainis, 991 F.2d 1102, 1109 (3d Cir. 1993).

Consequently, the petition will be denied as meritless without prejudice to any right Wolters may have to reassert his

present claims in a properly filed FOIA suit.⁴ See David v. United States, Civ. A. No. 3:CV-99-0836, slip op. at 5 (June 17, 1999 M.D. Pa.) (Munley, J.); Wool v. York County Prison, Civ. A. No. 4:CV-98-0138, slip op. at 2-3 (M.D. Pa. January 30, 1998) (McClure, J.); and Hewlett v. Holland, Civ. A. No. 3:CV-96-1075, slip op. at 9 (July 2, 1997 M.D. Pa.) (Nealon, J.) (a petitioner cannot elude more onerous filing fee requirements, and his claims will be dismissed, without prejudice, when they are not habeas corpus claims). An appropriate Order will enter.⁵


RICHARD P. CONABOY
United States District Judge

DATED: MAY 7th, 2013

⁴ The FOIA provides administrative remedies, including an appeals process by which individuals can request information from federal agencies. If a person fails to exhaust his available administrative remedies prior to filing a FOIA suit in federal district court, jurisdiction over his action may be declined. See McConnell v. United States, 4 F.3d 1227, 1240-41 (3d Cir. 1993); Thomas v. Internal Revenue Service, No. 3:03-CV-2080, 2004 WL 3185316 *3 (M.D. Pa. Nov. 2, 2004).

Exhaustion of administrative remedies is generally required to allow the appropriate federal agency the initial opportunity to exercise its discretion and expertise and to make a factual record regarding its determination with respect to the FOIA request. See Id.; Oglesby v. Department of the Army, 920 F. 2d 57, 64 (D.C. Cir. 1990).

⁵ In this regard, this Court expresses no opinion as to the merits, if any, of any FOIA claim Wolters may file based upon the facts asserted herein.